

JOHN J. COLE, )  
)  
Plaintiff )  
)  
v. ) Civil No. 96-0210-B  
)  
ROBERT GROSS, et al., )  
)  
Defendants )

Plaintiff, formerly a pre-trial detainee at the Washington County Jail, brings this action seeking injunctive and compensatory relief for conditions at the jail Plaintiff found wanting in several respects. Plaintiff seeks leave to proceed *in forma pauperis*. Plaintiff's Application to Proceed In Forma Pauperis fails to provide sufficient information upon which the Court may base a conclusion regarding Plaintiff's financial status. *See* 28 U.S.C. § 1915(d), *as amended by* Act of April 26, 1996. However, the Court concludes that the Complaint may in some respects be considered frivolous, and otherwise fails to state a claim, within the meaning of 28 U.S.C. § 1915(b).

Plaintiff's request for injunctive relief is moot in light of his present housing as an inmate at the Maine State Prison, unless one of four exceptions to the mootness doctrine applies in this case. One such exception is a class action lawsuit, where members of the class might still be affected by a court ruling despite factual circumstances rendering the

matter moot for the named plaintiff. *Sosna v. Iowa*, 419 U.S. 393 (1975). This exception does not apply in this *pro se* action. *See Avery v. Powell*, 695 F. Supp. 632, 643 (D.N.H. 1988) (finding *pro se* plaintiff inadequate representative for class certification).

The second possible exception is where Defendants have voluntarily ceased the allegedly unconstitutional activity, but are “free to return to [their] old ways.” *See United States v. W.T. Grant*, 345 U.S. 629 (1953). Again, that is not the case here.

Third, the Court may retain jurisdiction where Defendants’ alleged actions are “capable of repetition, yet evading review.” *Southern Pac. Term. v. ICC*, 219 U.S. 498, 515 (1911). However, this exception only applies if there is “a reasonable expectation or a demonstrated probability that the same controversy will recur involving the same complaining party.” *Murphy v. Hunt*, 455 U.S. 478, 482 (1982). There is no reason in this case to believe Plaintiff will again be incarcerated at the Washington County Jail.

Finally, the case is not moot if Plaintiff will suffer collateral consequences of the allegedly illegal acts, as a criminal conviction imposes collateral legal consequences even after release from incarceration. *Eg., Sibron v. New York*, 392 U.S. 40 (1968). There are no apparent collateral consequences to Plaintiff’s having endured the conditions he describes. Dismissal of Plaintiff’s Complaint, to the extent he seeks injunctive relief, is appropriate.

## *II. Claims for Compensatory Damages.*

To the extent Plaintiff seeks compensatory relief, he has failed to state a claim upon which relief could be granted. The complaint recites a litany of conditions Plaintiff apparently found unsatisfactory; however, nowhere is it alleged that Plaintiff personally encountered these conditions. More importantly, there is no allegation that Plaintiff suffered damages as a result.

### ***Conclusion***

For the foregoing reasons, I hereby recommend Plaintiff's Complaint be DISMISSED in its entirety.

### **NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on September 10, 1996.